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Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 9 1 11 PM '04

DISP-70-100

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Lincoln and Sherman, Illinois)

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MM Docket No. 01-120
RM-10126

REQUEST FOR SUPPLEMENTAL INFORMATION

Adopted: September 1, 2004

Released: September 3, 2004

Comment Date: October 12, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a Petition for Reconsideration filed by Long Nine, Inc. ("Long Nine") directed to the *Report and Order* in this proceeding.¹ Saga Communications of Illinois, Inc. ("Saga Communications") filed an Opposition to Petition for Reconsideration. For the reasons discussed below, we are issuing this *Request for Supplemental Information*.

Background

2. At the request of Saga Communications, licensee of Station WMHX, Channel 230B1, Lincoln, Illinois, the *Report and Order* in this proceeding reallocated Channel 230B1 from Lincoln to Sherman, Illinois, and modified the Station WMHX license to specify Sherman as the community of license. The *Report and Order* was adopted pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ In this situation, the reallocation resulted in Sherman (with a population of 2,871 persons) having its first local service while Lincoln (with a population of 15,369 persons) will continue to receive local service from AM Station WLLM and noncommercial educational Station WLNK. Based on the information then available from the Census Bureau Sherman was not located in the Springfield Urbanized Area and Station WFCB would provide only 2.7 percent of the Urbanized Area with a 70 dBu signal. Accordingly, the *Report and Order* did not require Saga Communications to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Sherman is independent of the Springfield Urbanized Area, and therefore, entitled to

¹ *Lincoln and Sherman, Illinois*, 17 FCC Rcd 5328 (MMB 2002).

² See *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990).

³ 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

consideration as a first local service.⁴

3. With regard to this reallocation proposal, the 2000 U.S. Census confirms the fact that Sherman is now located in the Springfield Urbanized Area and was located in the Urbanized Area at the time Saga Communications filed this proposal. We also concur with the Long Nine that as a Sherman station, it is possible to locate the Station WMHX transmitter to a site that would provide a 70 dBu signal to most, if not all, of the Springfield Urbanized Area. Had we been aware of the fact that Sherman is located within the Springfield Urbanized Area and/or had Saga Communications proposed such a transmitter site in its petition for rule making, we would have required a showing pursuant to *Faye and Richard Tuck* to demonstrate that Sherman is independent of the Urbanized Area and therefore entitled to consideration as a first local service. This potential transmitter site relocation has been noted by Long Nine and the *Report and Order* was specifically predicated on the reallocation being a first local service for Sherman. In the event the licensee of Station WMHX subsequently proposes to relocate its transmitter site to a location that would serve more than 50 percent of the Springfield Urbanized Area, the procedure of first proposing only a change in community of license and subsequently proposing the relocation of the transmitter site would effectively circumvent a specific Commission requirement that the licensee submit a showing pursuant to *Faye and Richard Tuck*.⁵ In order to avoid any such perception, we are requesting Saga Communications to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Sherman is independent of the Springfield Urbanized Area and therefore entitled to consideration as a first local service regardless of the location of its transmitter site. This would enable us to resolve this matter on the basis of a complete record and address any issue with respect to a two-step procedure to implement a migration of a station from a rural to an urbanized area.⁶

4. Interested parties may file comments on or before October 12, 2004. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the following counsel:

Saga Communications of Illinois, Inc.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, D.C. 20016

Shaw Pittman, LLP
2300 N Street, NW
Washington, D.C. 20037

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this matter, contact Robert Hayne, Media Bureau, (202) 418-2177. For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or the staff for clarification or adduction of

⁴ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); see also *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (A reallocation proposal requires a showing pursuant to *Faye and Richard Tuck* when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area).

⁵ See *Headland, Alabama, and Chattahoochee, Florida*, *supra*.

⁶ See *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 11230 (MB 2003).

evidence or resolution of the issues in the proceeding. However, any new written information elicited from such request or summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in this proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau